

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**RESOLUTION NO. 94-080**

**RECOMMENDATION FOR WATER QUALITY CERTIFICATION  
FOR  
SANTA CLARA VALLEY WATER DISTRICT  
COYOTE CREEK REACH 3  
FLOOD CONTROL PROJECT  
SANTA CLARA COUNTY**

**WHEREAS, the Santa Clara Valley Water District (SCVWD) has applied to the State for Water Quality Certification under Section 401 of the Federal Clean Water Act for the filling of 4.2 acres of Waters of the United States (which includes 1.6 acres of wetlands) which have been delineated as such under Section 404 of the Federal Clean Water Act; and**

**WHEREAS, these Waters of the United States will be filled in the course of SCVWD undertaking the Coyote Creek Reach 3 Flood Control Project to provide 100-year flood protection in the cities of San Jose and Milpitas; and**

**WHEREAS, excavation of the project's adjacent overflow channel would cause 0.2 acres of one depression to be excavated deeper, and could indirectly affect an additional 1.2 acres of wetlands by altering the local hydrology. As such, some or all of the wetlands habitat in this 1.2 acres of wetlands could be lost; and**

**WHEREAS, the Regional Board under Section 401 of the Clean Water Act reviews applications to determine if the proposed activity will meet State water quality objectives for Water Quality Certification for the proposed activity; and**

**WHEREAS, Water Quality Certification is a certification for an activity that requires a federal license or permit that there is reasonable assurance that the activity which may result in discharge to waters of the United States will not violate water quality objectives (Title 23, California Code of Regulations, Section 3830 et. seq.); and**

**WHEREAS, SCVWD submitted an application for water quality certification on June 1, 1994; and**

**WHEREAS, the California Environmental Quality Act (CEQA) requires all projects approved by State agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document (EIR or Negative Declaration) for such projects; and**

**WHEREAS, SCVWD prepared an Environmental Impact Report for this project in 1984; and**

WHEREAS, the 1.6 acres of wetlands, within the 4.2 acres of Waters of the United States, proposed to be filled contain areas composed of hydric soils that are periodically inundated with surface and groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, and are therefore defined as a wetland according to 40 CFR 122.2; and

WHEREAS, these areas covered by wetland and riparian vegetation provide valuable habitat for resident and migratory birds of a wide variety of species as well as providing wildlife habitat; and

WHEREAS, the Regional Board, in Resolution No. 87-106, dated August 19, 1987, adopted, in accordance with Section 13244 et. seq. of the California Water Code, amendments to the Water Quality Control Plan, San Francisco Bay Basin (Basin Plan) that established a policy for regulating wetland fill (however, this policy has not been approved by the State Office of Administrative Law); and

WHEREAS, the proposed Basin Plan Wetland Fill Policy seeks to establish that there be no net loss of wetland acreage and no net loss of wetland habitat value when the project and the proposed mitigation are evaluated together and that mitigation for wetland fill projects be located in the same area of the Region, wherever possible, as the project; and

WHEREAS, SCVWD has submitted an alternatives analysis that addresses the requirements of Section 404(b)(1) of the Clean Water Act, and the Regional Board has utilized this alternatives analysis in their consideration of the case; and

WHEREAS, Section 13142.5 of the California Water Code requires that the "Highest priority shall be given to improving or eliminating discharges that adversely affect...Wetlands, estuaries, and other biologically sensitive sites."; and

WHEREAS, Senate Concurrent Resolution No. 28 states that, "It is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend on them for the benefit of the people of the State."; and

WHEREAS, the discharge of fill material into the wetlands of the project site will cause a condition of pollution to exist in these waters of the State by altering the quality and quantity of water in the area, that is needed to support wetland beneficial uses, to a degree that will eliminate the beneficial uses of these waters of the State; and

WHEREAS, SCVWD has proposed mitigation measures in its Habitat Mitigation and Monitoring Plan as part of its application for Water Quality Certification, to offset the loss of beneficial uses of waters of the State, resulting from the discharge of fill material into the wetlands of the State at the project site; and

WHEREAS, the proposed mitigation includes five types of planting as mitigation for the fill: 16 1/2 acres of riparian forest, 2 acres of setback plantings, 1/2 acre of rocked streamside area

plantings, 1 acre of streambank shade and cover plantings, and 1/2 acre of seasonal wetlands; now

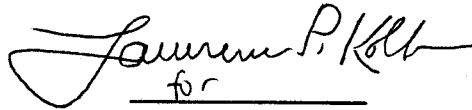
**BE IT THEREFORE RESOLVED**, that this Regional Board recommends that the Executive Director of the State Water Resources Control Board grant Water Quality Certification pursuant to Section 401 of the Clean Water Act and State regulations in Title 23 California Code of Regulations Section 3830 et. seq., for the Santa Clara Valley Water District Coyote Creek Reach 3 Flood Control Project, Santa Clara County, with the provisions that:

1. SCVWD shall not discharge, or create a potential for discharge, any soil materials, including fresh concrete, cement, silts, clay or sand, which are not specified in the project's workplan, to storm drains or any creek or tributary.
2. Drainage and surface flows from the construction areas shall be controlled to prevent downstream erosion.
3. All surplus and waste materials shall be disposed of in an appropriate manner and location sufficient to prevent erosion and subsequent sedimentation.
4. Prior to the initiation of any work, a final wetland mitigation and monitoring plan shall be submitted by SCVWD to the U.S. Army Corps of Engineers and the Regional Board Executive Officer for approval. The plan shall contain contingency measures to be implemented by SCVWD should the monitoring plan identify the mitigation as not fully successful in offsetting lost wetland functions and values within a five year period. The plan shall also contain detailed performance criteria and monitoring methods.
5. The 1.2 acres of wetlands that may be affected by alteration of the local hydrology must be monitored by SCVWD at the same frequency as seasonal wetlands will be monitored for vegetation, soil, and hydrology for the years one, three, and five. Mitigation would be required in-kind and on-site at a minimum of 1:1, for any portion of the 1.2 acres of wetlands which loses its wetlands habitat.
6. Monitoring reports shall indicate if modifications are needed to the mitigation and monitoring plan and point out appropriate steps to correct any deficiencies in the mitigation or monitoring plan.
7. SCVWD shall submit the monitoring reports, the as-built status report and the notice of completion to the Executive Officer of the Regional Board.
8. At all stages of the mitigation, success of the mitigation shall be determined by, and to the satisfaction of, the Department of Fish and Game and the Executive Officer of the Regional Board. Success criteria will be determined as specified in the approved mitigation and monitoring plan.

9. Prior to the initiation of any work, the Agreement Regarding Proposed Stream or Lake Alteration, obtained from the Department of Fish and Game covering all work to be performed in or near the creeks, shall be complied with.

BE IT FURTHER RESOLVED, that this Regional Board directs the Executive Officer to transmit this resolution to the Executive Director of the State Water Resources Control Board.

I, Steven R. Ritchie, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on July 20, 1994.

A handwritten signature in cursive script, reading "Lauren P. Kolb". Below the signature, the word "for" is written in a smaller, simpler script.

Steven R. Ritchie  
Executive Officer